

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

HONEYWELL INTERNATIONAL INC. and)
HONEYWELL INTELLECTUAL)
PROPERTIES INC.,)

Plaintiffs)

v.)

ACER AMERICA CORPORATION,)
AU OPTRONICS CORPORATION,)
AU OPTRONICS CORPORATION)

C.A. No. 6:07-CV-125 (LED)

AMERICA,)
BENQ AMERICA CORP.,)
BENQ USA CORP.,)
CHUNGHWA PICTURE TUBES, LTD.,)
NOVATEK MICROELECTRONICS)
CORPORATION, LTD.,)

JURY TRIAL DEMANDED

and)

QUANTA DISPLAY, INC.,)

Defendants.)

**HONEYWELL’S MOTION TO STAY DEADLINES PENDING THE COURT’S
ADOPTION OF MAGISTRATE JUDGE LOVE’S REPORT AND RECOMMENDATION
ON DEFENDANTS’ MOTIONS FOR SUMMARY JUDGMENT OF NON-
INFRINGEMENT**

Plaintiffs Honeywell International Inc. and Honeywell Intellectual Properties Inc. (Honeywell) hereby and through their counsel move the Court for a stay of the deadlines contained in the Docket Control Order (Docket No. 76), as modified on January 20, 2009 (Docket No. 142), and again on May 11, 2009 (Docket No. 221) (collectively the Modified Docket Control Order), pending the Court’s adoption of Magistrate Judge Love’s Report and Recommendation on Defendants’ Motions for Summary Judgment of Non-Infringement. A stay

of these deadlines is appropriate because the Court's adoption of Judge Love's Report and Recommendation would render these pretrial preparations moot, as this matter would not go to trial.¹

The following deadlines from the Modified Docket Control Order are rapidly approaching:

May 25, 2009:	Joint Pretrial Order, Joint Proposed Jury Instructions, and Form of Verdict
May 25, 2009:	Pretrial Disclosures (including trial exhibit lists and designation of deposition excerpts)
June 4, 2009:	Rebuttal Designations and Objections to Deposition Testimony
June 12, 2009:	Objections to Rebuttal Deposition Testimony
June 12, 2009:	Pretrial Objections
June 15, 2009:	Motions in Limine
June 18, 2009:	Pretrial Conference

Because adoption of Judge Love's Report and Recommendation would preclude this matter from going to trial, completing pretrial disclosures and preparing for trial would be wasteful of the parties' resources, costing thousands of dollars and many hours of attorney time. The Court's

¹ Novatek has indicated that it will oppose this Motion to Stay because of its desire to go to trial on the inequitable conduct and validity issues. However, the Court's Claim Construction Ruling, which Honeywell will seek to appeal, is tied to both infringement and validity analyses. For example, one claim construction issue is whether the claims are limited such that the polarities can only be interchanged at the frame change. Novatek's expert testified that, in Mihara, the prior art reference that Novatek argues anticipates the '823 patent, polarities are interchanged multiple times per frame. (Exhibit 5A, 5 Feb. 26, 2009 Deposition of Roger Stewart at 237:15-238:14). Therefore, this claim construction issue, which will be decided on appeal, is inextricably tied to validity.

Moreover, if Honeywell wins on appeal, validity would have to be re-tried because new claim constructions would have to be applied to the validity analysis. If Novatek wins on appeal, validity never has to be tried because it becomes moot as to Novatek, as the '823 patent has expired. Furthermore, validity would be moot as to all other companies in the industry because Honeywell could not prove infringement by anyone in light of the claim construction regarding the "opposite polarity" limitation.

resources would also be wasted to the extent the Court begins reviewing these pretrial disclosures in preparation for the Pretrial Conference.

Defendant Novatek Microelectronics Corporation, Ltd. ("Novatek") has indicated to Honeywell that it will likely be objecting to Judge Love's Report and Recommendation. (Exhibit "B," May 19, 2009 Email from Ted. T. Herhold to A. James Anderson). However, any objections by Novatek are not due until June 8, 2009, with Honeywell's Response due July 18, 2009 – the day of the Pretrial Conference – and after the Joint Pretrial Order, Joint Proposed Jury Instructions, Form of Verdict, Pretrial Disclosures, Rebuttal Designations, Objections to Deposition Testimony, Pretrial Objections, and Motions in Limine are due. Therefore, without a stay, the parties and the Court will be expending considerable resources preparing for trial, while at the same time addressing the issue of whether Judge Love's Report and Recommendation should be adopted, and thus whether a trial will even take place.

Therefore, Honeywell respectfully requests that the Court enter an Order that the remaining deadlines contained in the Modified Docket Control Order be stayed pending the Court's adoption of Judge Love's Report and Recommendation on Defendants' Motions for Summary Judgment of Non-Infringement. A proposed Order is attached hereto.

DATED: May 19, 2009

Respectfully submitted,

/s/ J. Thad Heartfield

A. James Anderson (admitted *pro hac vice*)

Georgia Bar No. 016300

Marla R. Butler (admitted *pro hac vice*)

Georgia Bar No. 099917

J. Scott Culpepper (admitted *pro hac vice*)

Georgia Bar No. 200950

Anna R. Carr (admitted *pro hac vice*)

North Carolina Bar No. 31437

Georgia Bar No. 208034

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

2600 One Atlanta Plaza

950 East Paces Ferry Road, N.E.

Atlanta, GA 30326-1119

Telephone: 404-760-4300

Facsimile: 404-233-1267

Email: ajanderson@rkmc.com

Email: mrbutler@rkmc.com

Email: jsculpepper@rkmc.com

Email: arcarr@rkmc.com

J. Thad Heartfield

Texas Bar No. 09346800

THE HEARTFIELD LAW FIRM

2195 Dowlen Road

Beaumont, Texas 77706

Telephone: 409-866-3318

Facsimile: 409-866-5789

Email: thad@jth-law.com

ATTORNEYS FOR PLAINTIFF

HONEYWELL INTERNATIONAL INC. and

**HONEYWELL INTELLECTUAL PROPERTIES
INC.**

CERTIFICATE OF CONFERENCE

The undersigned conferred with counsel for defendant Novatek, Michael Smith, on the issues raised by this motion on May 19, 2009. The discussion conclusively resulted in an impasse, leaving an open issue that only the Court can resolve.

/s/ J. Thad Heartfield
J. Thad Heartfield

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 19th day of May, 2009. Any other counsel of record will be served by first class mail.

/s/ J. Thad Heartfield
J. Thad Heartfield